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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1958

No. 830

J. PETERSEN,
Appellant,

vs.

OF CALIFORNIA,
Respondent.

On Appeal from the Supreme Court of the State of California.

APPELLANT'S REPLY TO RESPONDENT'S MOTION TO AFFIRM.

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INTRODUCTION.

On motion to affirm, respondent concedes the jurisdictional requisites. However, respondent improperly states the questions presented, which are properly set forth in the Jurisdictional Statement (pp. 5-6). Respondent makes two arguments which we now consider.

(1) LOCAL POLICE POWER OVER MATTERS OF LOCAL CONCERN IS SUBJECT TO THE RESTRICTIONS OF THE UNITED STATES CONSTITUTION.

There is a persistent assumption by counsel for respondent that an ordinance providing for exclusive taxicab stands must necessarily constitute a valid exercise of local police power. Counsel seems to rely exclusively on *City of New York v. Reesing*, 77 N.Y.S. 82 (p. 5). This is not the holding of this case as shown by *Farrell v. City of Syracuse*, 242 N.Y.S. 316, 137 Misc. Rep. 472. In that case, the New York Supreme Court said:

> "Certain cases have been cited as authorities to uphold the contention of the municipality. The only case in New York is City of New York v. Reesing, 77 App. Div. 417, 79 N.Y.S. 331. A critical examination of this case will show that it will not bear out the claim that the ordinance in question here is a lawful one. All that was decided in that case was whether defendants were liable to pay a fine by reason of the violation of a city ordinance." (p. 332)

Regardless of counsel's assumption, asserted local police power can never do violence to the United States Constitution (*Connolly v. Union Sewer Pipe Co.*, 184 U.S. 540, 46 L.Ed. 679, 22 S.Ct. 431, 438-439).

> ". . . the police power, broad as it is, cannot justify the passage of a law or ordinance which runs counter to the limitations of the federal Constitution; that principle has been so frequently

affirmed in this court that we need not stop to cite the cases."

Buchanan v. Warley, 245 U.S. 60, 74, 38 S.Ct. 16, 18, 62 L.Ed. 149.

Respondent further argues that if a municipality can bar *all* taxicab companies from its streets, then any kind of regulation, however discriminatory, is valid. The mere statement of this proposition demonstrates its fallacy.

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(2) THE MERE RIGHT OF APPEAL DOES NOT CURE THE ARBITRARY DELEGATION OF LEGISLATIVE POWER INVALID FOR LACK OF STANDARDS.

Respondent concedes that the San Francisco ordinance does not set forth standards to guide the Chief of Police in granting or denying an exclusive taxicab permit. Respondent contends, however, that this is immaterial because the action of the Chief of Police is subject to review by the Board of Permit Appeals. This limited administrative review in no way supplies the constitutional safeguard. The same argument was made in *Orleans Parish School Board v. Bush,* 242 Fed. (2d) 156 (Fifth Cir.), where the Court said:

"The plaintiffs, seeking to assert their right to attend non-segregated schools as guaranteed them under the Constitution, would be remitted to an administrative official guided by no defined standards in the exercise of his discretion. In such circumstances no number of hearings or appeals

would avail them anything because it would be impossible for them to bring forward any proof bearing on whether they possessed those attributes, qualifications, or characteristics that would bring them within the group of students permitted to attend the particular school or schools". (pp. 164-165).

CONCLUSION.

The San Francisco taxicab ordinances involve constitutional issues of major importance over which the highest state tribunals are in wide conflict. Therefore, the motion to affirm should be denied and this appeal entertained.

Dated, San Francisco, California,
May 25, 1959.

Respectfully submitted,
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